

Article - Transportation

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§21-902.

(a) (1) (i) A person may not drive or attempt to drive any vehicle while under the influence of alcohol.

(ii) A person may not drive or attempt to drive any vehicle while the person is under the influence of alcohol per se.

(iii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(iv) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under subsection (b), (c), or (d) of this section or § 8-738 of the Natural Resources Article, within 5 years before the conviction for a violation of this paragraph, shall be considered a prior conviction.

(2) (i) A person may not violate paragraph (1) of this subsection while transporting a minor.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both; and

2. For a second offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (b)(2), (c)(2), or (d)(2) of this section shall be considered a prior conviction.

(b) (1) (i) A person may not drive or attempt to drive any vehicle while impaired by alcohol.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding \$500 or both; and

2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (a), (c), or (d) of this section or § 8-738 of the Natural Resources Article shall be considered a prior conviction.

(2) (i) A person may not violate paragraph (1) of this subsection while transporting a minor.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (c)(2), or (d)(2) of this section shall be considered a prior conviction.

(c) (1) (i) A person may not drive or attempt to drive any vehicle while so far impaired by any drug, any combination of drugs, or a combination of one or more drugs and alcohol that the person cannot drive a vehicle safely.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 months or a fine not exceeding \$500 or both; and

2. For a second offense, imprisonment not exceeding 1 year or a fine not exceeding \$500 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this subsection or subsection (a), (b), or (d) of this section or § 8–738 of the Natural Resources Article shall be considered a prior conviction.

(iv) It is not a defense to any charge of violating this subsection that the person charged is or was entitled under the laws of this State to use the drug, combination of drugs, or combination of one or more drugs and alcohol, unless the person was unaware that the drug or combination would make the person incapable of safely driving a vehicle.

(2) (i) A person may not violate paragraph (1) of this subsection while transporting a minor.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (b)(2), or (d)(2) of this section shall be considered a prior conviction.

(d) (1) (i) A person may not drive or attempt to drive any vehicle while the person is impaired by any controlled dangerous substance, as that term is defined in § 5–101 of the Criminal Law Article, if the person is not entitled to use the controlled dangerous substance under the laws of this State.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 1 year or a fine not exceeding \$1,000 or both; and

2. For a second offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under subsection (a), (b),

or (c) of this section or § 8–738 of the Natural Resources Article, within 5 years before the conviction for a violation of this paragraph, shall be considered a prior conviction.

(2) (i) A person may not violate paragraph (1) of this subsection while transporting a minor.

(ii) A person convicted of a violation of this paragraph is subject to:

1. For a first offense, imprisonment not exceeding 2 years or a fine not exceeding \$2,000 or both; and

2. For a second offense, imprisonment not exceeding 3 years or a fine not exceeding \$3,000 or both.

(iii) For the purpose of determining subsequent offender penalties for a violation of this paragraph, a prior conviction under this paragraph or subsection (a)(2), (b)(2), or (c)(2) of this section shall be considered a prior conviction.

(e) For purposes of the application of subsequent offender penalties under this section, a conviction for a crime committed in another state or federal jurisdiction that, if committed in this State, would constitute a violation of subsection (a)(1) or (2), (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of this section or § 8–738 of the Natural Resources Article shall be considered a violation of subsection (a)(1) or (2), (b)(1) or (2), (c)(1) or (2), or (d)(1) or (2) of this section or § 8–738 of the Natural Resources Article.

(f) (1) In this subsection, “imprisonment” includes confinement in:

(i) An inpatient rehabilitation or treatment center; or

(ii) Home detention that includes electronic monitoring for the purpose of participating in an alcohol treatment program that is:

1. Certified by the Maryland Department of Health;

2. Certified by an agency in an adjacent state that has powers and duties similar to the Maryland Department of Health; or

3. Approved by the court.

(2) (i) A person who is convicted of a violation of subsection (a) of this section within 5 years after a prior conviction under that subsection is subject to a mandatory minimum penalty of imprisonment for not less than 5 days.

(ii) A person who is convicted of a third or subsequent offense under subsection (a) of this section within 5 years after a prior conviction under that subsection is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

(3) (i) A person who is convicted of a violation of subsection (d) of this section within 5 years after a prior conviction under that subsection is subject to a mandatory minimum penalty of imprisonment for not less than 5 days.

(ii) A person who is convicted of a third or subsequent offense under subsection (d) of this section within 5 years after a prior conviction under that subsection is subject to a mandatory minimum penalty of imprisonment for not less than 10 days.

(4) A person who is convicted of an offense under subsection (a) of this section within 5 years after a prior conviction under that subsection shall be required by the court to:

(i) Undergo a comprehensive alcohol abuse assessment; and

(ii) If recommended at the conclusion of the assessment, participate in an alcohol program as ordered by the court that is:

1. Certified by the Maryland Department of Health;

2. Certified by an agency in an adjacent state that has powers and duties similar to the Maryland Department of Health; or

3. Approved by the court.

(5) A person who is convicted of an offense under subsection (d) of this section within 5 years after a prior conviction under that subsection shall be required by the court to:

(i) Undergo a comprehensive drug abuse assessment; and

(ii) If recommended at the conclusion of the assessment, participate in a drug program as ordered by the court that is:

1. Certified by the Maryland Department of Health;

2. Certified by an agency in an adjacent state that has powers and duties similar to the Maryland Department of Health; or

3. Approved by the court.

(6) The penalties provided under this subsection are mandatory and are not subject to suspension or probation.

(g) (1) In this subsection, “test” has the meaning stated in § 16–205.1 of this article.

(2) The penalties under this subsection are in addition to any other penalty imposed for a violation of this section.

(3) Subject to paragraph (4) of this subsection, if a person is convicted of a violation of this section and the trier of fact finds beyond a reasonable doubt that the person knowingly refused to take a test arising out of the same circumstances as the violation, the person is subject to imprisonment not exceeding 2 months or a fine not exceeding \$500 or both.

(4) A court may not impose an additional penalty under this subsection unless the State’s Attorney serves notice of the alleged test refusal on the defendant or the defendant’s counsel before the earlier of:

(i) Acceptance of a plea of guilty or nolo contendere; or

(ii) At least 15 days before trial in a circuit court or 5 days before trial in the District Court.

(h) (1) A person may not violate subsection (a), (b), (c), or (d) of this section if the person previously has been convicted of two violations of any provision of subsection (a), (b), (c), or (d) of this section or § 8–738 of the Natural Resources Article.

(2) For purposes of this subsection, a conviction for a crime under the laws of the United States that would be a crime included in paragraph (1) of this subsection if committed in this State shall be considered a prior conviction under this subsection.

(3) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding \$5,000 or both.

(i) (1) A person may not violate subsection (a), (b), (c), or (d) of this section if the person previously has been convicted of:

(i) Three or more violations of any provision of subsection (a), (b), (c), or (d) of this section or § 8–738 of the Natural Resources Article; or

(ii) A violation of § 2–209, § 2–503, § 2–504, § 2–505, § 2–506, or § 3–211 of the Criminal Law Article.

(2) For purposes of this subsection, a conviction for a crime under the laws of the United States that would be a crime included in paragraph (1) of this subsection if committed in this State shall be considered a prior conviction under this subsection.

(3) A person who violates this subsection is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 10 years or a fine not exceeding \$10,000 or both.

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